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~~No. 14 Originals.~~ *October Term, 1881.*

EP-PARTE, IN THE MATTER OF

THE BALTIMORE AND OHIO RAILROAD COMPANY,

PETITIONER.

APPLICATION FOR A WRIT OF MANDAMUS.

BRIEF FOR RELATOR.

JOHN H. B LATROBE,
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E. J. D. CROSS,
Of Counsel for Relator.

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Counsel for the relator respectfully submit the following argument why the writ of mandamus prayed for should be allowed.

The statute granting appeals is as follows: "An appeal shall be allowed to the Supreme Court from all final decrees of any Circuit Court . . . . where the matter in dispute exclusive of costs exceeds the sum or value of two thousand dollars; and the Supreme Court is required to receive, hear and determine such appeals."

Revised Statutes, sec. 692.

This amount was changed by Act February 16th, 1875, to five thousand dollars.

Sup. to Rev. Stats., p. 136.

The sole question then is: Does the matter in dispute, as far as the relator is concerned, exceed this sum or value?

The matter in dispute is the subject in litigation or controversy. As far as the complainants are concerned, it was what each claimed. As to the defendant, it was what was claimed of it, and was as to amount, what it was decreed to pay.

In the case of *Shields* vs. *Thomas*, 17 Howard, 5, C. J. Taney, upon the motion to dismiss, draws this distinction: "So far as the appellant is concerned, the entire sum found due by the Kentucky Court is in dispute. He disputes the validity of that decree, and denies his obligation to pay any part of the money. And if the appellees maintain their bill, he will be made liable to pay the whole amount decreed to them. This is the controversy on his part; and the amount exceeds two thousand dollars. We think the Court, therefore, has jurisdiction on the appeal."

This distinction, we think, has been recognized in the cases in this Court.

In *Oliver* vs. *Alexander et al.*, 6 Pet. 143, there was a separate and several decree in each case, determining each seaman's claim. Each claim was independent.

In this case the libel was for the loss of vessel and cargo. The libel was in effect against the steamer Knickerbocker, for alleged negligence by which both the vessel and cargo were injured. There could have been no recovery for one unless for the other.

In *Rich* vs. *Lambert*, 12 How., 347, the owners of the different portions of the cargo were held to have had separate and distinct interests. This distinction was recognized by Justice Nelson in *Seaver* vs. *Bigelows*, 5 Wall. 208. In which last case the appeal was by a party whose judgment was under the jurisdictional amount, which is not, however, the case before the Court.

So in *Paving Company* vs. *Mumford*, 100 U. S. 147, the judgment could only have been several against each defendant. In that case the Chief Justice says: "In such cases the appeal of each separate defendant or complainant must stand or fall according as his own interest in the controversy exceeds or falls short of our jurisdictional amount." We submit that the *interest* of the relator in the decree, from which an appeal is now sought, exceeds the jurisdictional amount.

In the case of *Parcher et al.* vs. *Cuddy*, No. 1,114, of the present term, the Court held that the value of the matter in dispute was the "full amount of all the claims against the owners of the Mamie in the several suits which it was the object of this proceed-

ing to defeat, as against anything else than the boat or her value. This, according to the showing now made, is largely in excess of $5,000."

In that case the separate claims were those of the administrators, each of which was under the jurisdictional amount. So in the present case, the claims respectively of the owners of the cargo and vessel, dependant as they were upon the relator's liability for the alleged tort, were each under the required amount, but in the aggregate, as in the case of the "Mamie" exceeded it.

It has been the confidence of the relator's counsel in the applicability of the case of the "Mamie" to the case at bar that has had its influence upon them in filing the present petition. The distinction there made between those cases, in which the amount of the claim settles the jurisdiction, and those in which the liability of the defendant, growing out of the subject matter in dispute, equals the sum of the claims is recognized in Mr. Phillip's Practice, which, although not offered as authority, may be referred to as having its effect upon our views on this question.

Phillips' Practice, p. 93, last edition.

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